

Remarks

In the official action the Examiner rejects all of the active claims as either being anticipated or obvious in view of Kowalski (WO 98/57373).

All of the independent claims pending in this application are amended by this response to more clearly differentiate the invention as set forth in those claims from Kowalski.

Turning to amended claim 1, for example, this claim now recites that "said first end of said via is connected to said first metal layer and said second end of said via terminates at a termination point without reaching said second metal layer, said termination point being laterally spaced relative to the metal of the second metal layer."

Kowalski teaches just the opposite. Note Figure 2 thereof where the left hand via V2 aligns exactly with the metal 12-2 of the underlying layer. Thus, Kowalski does not teach that the via has a termination point which is "laterally spaced relative to the metal of the second metal layer" as now specifically claimed by claim 1.

The Examiner will note that all of the independent claims pending in this application have been amended, including those which the Examiner has withdrawn from consideration.

As the Examiner is not doubt aware, the prior art which was cited to the Examiner after the issuance of the Notice of Allowance came from the prosecution of a corresponding PCT application which was searched by a European Examiner. The European Examiner issued no restriction requirement as the US Examiner has done and, moreover, it is suggested, with all due respect to the Examiner, if the Examiner had not issued the restriction requirement, but had searched all of the art, including the art relative to both method claims and apparatus claims, that the Examiner would have had a better chance of finding the same art which the European Examiner found during his search. This just serves to demonstrate and is consistent with the position which the Applicant has been maintaining all along, that the Examiner's restriction requirement is not well taken.

Moreover, the Examiner needs to consider the Notice of Allowance. When this application was allowed, all of the claims were allowed in it. As such, it is clear that the Examiner withdrew the restriction requirement in response to the prior submissions being made by the Applicant.

Why is the restriction requirement now being reimposed at this late stage in the prosecution? Moreover, why does the Examiner restrict out claim 18 but examine claim 19 when claim 19 is dependent upon claim 18?

With all due respect to the Examiner, it appears that this is an oversight on the Examiner's behalf and it is assumed that the Examiner did not intend to reinstate the restriction requirement and therefore the Applicant has amended all the independent claims in this application to differentiate them from Kowalski and Kano.

In Applicant's invention the via is clearly laterally spaced from the metal in at least one of the metal layers as clearly shown in Figures 2a and 2b of this application.

Reconsideration of this application as amended is respectfully requested.

The Commissioner is authorized to charge any additional fees which may be required or credit overpayment to deposit account no. 12-0415. In particular, if this response is not timely filed, then the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 CFR 1.136 (a) requesting an extension of time of the number of months necessary to make this response timely filed and the petition fee due in connection therewith may be charged to deposit account no. 12-0415.

I hereby certify that this correspondence is being deposited with the United States Post Office with sufficient postage as first class mail in an envelope addressed to Commissioner for Patents

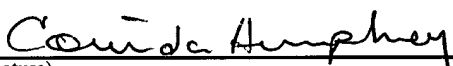
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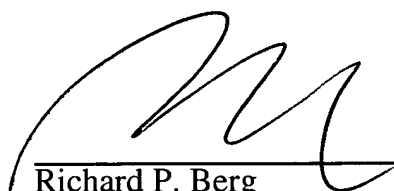
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August 27, 2003

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